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Amendment to the Commission's Rules
Regarding a Plan for Sharing
the Costs of Microwave Relocation

COMMENTS OF U.S. AIRWAVES INC.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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Amendment to the Commission's Rules)	WT Docket No. 95-157
Regarding a Plan for Sharing)	RM-8643
the Costs of Microwave Relocation)	

COMMENTS OF U.S. AIRWAVES INC.

U.S. AirWaves Inc. ("AirWaves"), hereby submits its comments regarding the above-captioned Notice of Proposed Rule Making released October 13, 1995.^{1/} AirWaves intends to bid in the December 18, 1995 Entrepreneur's C Block Auction for broadband Personal Communications Services ("PCS") licenses. AirWaves supports the Commission's conclusion that the public interest is served by adopting a plan for sharing the costs of relocating microwave facilities currently operating in the 1850 to 1990 MHz ("2 GHz") band, which has been allocated for use by broadband PCS.^{2/} AirWaves believes the implementation of the proposed plan will speed the relocation process and fairly distribute the costs among the entities that already have been awarded licenses and the successful bidders in future FCC auctions for the remainder of the PCS spectrum blocks.

^{1/} Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, Notice of Proposed Rulemaking, FCC 95-426, WT Docket No. 95-157, Released October 13, 1995 ("NPRM").

^{2/} NPRM at ¶ 1.

I. WITH MINOR MODIFICATIONS, AIRWAVES SUPPORTS THE COMMISSION'S PROPOSED COST-SHARING PLAN.

A. The Cost-Sharing Formula Proposed By The Commission Should Be Modified Slightly To Incorporate A Cost-Reimbursement Cap.

AirWaves supports the Commission's proposal to incorporate a \$250,000 cap (plus \$150,000 if a tower is required) on total reimbursable costs under the proposed microwave relocation policy.^{3/} Indeed, as a potential future PCS license holder, a maximum cap on the amount for which it will be liable for payment to PCS relocators is critical to AirWaves' support of the Commission's cost-sharing proposal. A cap on these potential obligations is essential to the development and success of any new wireless company that is seeking investment and positioning itself to offer new services to the public.

AirWaves believes, moreover, that the cap should be incorporated explicitly into the Commission's cost-sharing formula in order to accurately reflect costs incurred by the first PCS relocators and costs incurred over time by subsequent PCS license holders.^{4/} The modified formula would read as follows:

$$R_n = [\text{Minimum } ((C_c + C_t) \text{ or } C)] / N \times [120 - (T_n - T_1)] / 120$$

R = the amount of reimbursement

C_c = the cap for reimbursement

C_t = the cap for tower reimbursement (if applicable to this particular microwave path)

C = the amount paid to relocate the link

^{3/} Id. at ¶ 43.

^{4/} Furthermore, upon review of the proposed formula, AirWaves concludes that the T₁ variable does not impact the result, and recommends its deletion for the purposes of simplicity.

N = the next PCS licensee that would interfere with the link

Tn = T1 plus the number of months that have passed since the relocater obtained its reimbursement rights

T1 = the month that the first PCS licensee obtained rights to reimbursement

AirWaves believes that using the above recommended formula will best serve the public interest and help ensure an expedited introduction of new wireless services to the public.

B. AirWaves Supports The Commission's Depreciation Proposals.

AirWaves agrees with the Commission that calculating depreciation based on a uniform date will make it administratively easier to apply the cost-sharing formula and will serve as an accurate reference to estimate potential relocation costs.^{5/} AirWaves supports the Commission proposal that this uniform date be April 1995, the date when the voluntary negotiation period began for A and B Block license winners.

II. REIMBURSEMENT OF PCS RELOCATORS WILL ENCOURAGE DEVELOPMENT OF PCS SYSTEMS.

A. PCS Licensees Should Be Entitled To Full Reimbursement Less Depreciation For Relocation Of Links Outside Of Their Frequency Blocks Or Service Areas.

AirWaves supports the Commission's proposal that PCS relocators be entitled to 100 percent reimbursement up to the allowable cap, less depreciation, for the relocation of a microwave system or links. However, reimbursement should only be paid when the subsequent PCS carrier will

^{5/} Id. at ¶ 31.

actually utilize the frequencies in question and will thus benefit from a relocation paid for by an earlier PCS licensee.

B. Only Actual Relocation Costs, And Not Premium Payments Should Be Reimbursable.

AirWaves supports the Commission's conclusion that premium payments should not be reimbursable to PCS relocators.^{6/} As the Commission points out, it is not appropriate or equitable for subsequent PCS license holders to be burdened with additional costs because an initial PCS relocater paid a premium in order to be the first carrier to operate in that market.^{7/} In addition, the nature of premium payments could be difficult to track, especially if not paid in cash, but in kind. As is described in more detail below, AirWaves further believes that the definition of premium payments should include any premiums paid to upgrade microwave incumbents from an existing analog system to a digital system.

III. REIMBURSEMENT RIGHTS SHOULD BE CREATED.

AirWaves agrees with the Commission's tentative conclusion that PCS relocators should obtain some form of rights for which they would be entitled to reimbursement, through a clearinghouse that would register the name of the PCS relocater in place of the microwave incumbent.^{8/}

AirWaves does not support the alternative approach, outlined in paragraph 48 of the NPRM, under which the microwave licensee would assign its microwave license to

^{6/} Id. at ¶ 37.

^{7/} Id.

^{8/} Id. at ¶ 46.

the PCS licensee under Section 94.47 of the Commission's rules, as part of a relocation agreement. AirWaves believes that this approach would be administratively cumbersome for both the Commission and PCS licensees, and has the potential to create an unnecessary cloud of uncertainty over the rights that will be held by PCS operators.

IV. THE COMMISSION HAS IDENTIFIED AN APPROPRIATE STANDARD FOR DEFINING INTERFERENCE; REIMBURSEMENT SHOULD BE MADE ONLY FOR CO-CHANNEL USE.

AirWaves agrees with the Commission's tentative conclusion that the TIA Bulletin 10-F is the appropriate standard to be used in determining interference for purposes of the proposed cost-sharing plan.^{9/} As the Commission notes, this standard was developed to determine PCS-to-microwave interference as well as microwave-to-microwave interference.^{10/}

If minimum coordination distance equations are to be utilized, then AirWaves further recommends that they include the usage of terrain within the calculation equation, similar to the Service Area Boundaries (SAB) calculations currently used in the Commission's Part 22 Rules pertaining to cellular service. This issue becomes especially critical in mountainous areas around the country. For example, a microwave path may not need to be relocated if the path is on one side of the mountain and there is judged to be no possibility of interference from the PCS carrier serving the other side of the mountain.

In addition, AirWaves supports the Commission's proposal that, for administrative simplicity, the

^{9/} Id. at ¶ 52.

^{10/} Id.

reimbursement calculations should apply only to the occupied bandwidth associated with the transmitting bandwidths, and not to the receiving bandwidths. This approach would reduce administrative complexities when deciding who should be reimbursed since the receiving bandwidth could be substantially greater than the transmitting bandwidth. Similarly, AirWaves supports the Commission's position that co-channel, but not adjacent channel, interference should be included for purposes of determining a reimbursement obligation.

V. A CLEARINGHOUSE IS THE APPROPRIATE MECHANISM FOR PCS RELOCATOR REIMBURSEMENT.

A. PCS Licensees Should Not Be Required To Pay Reimbursement Until The Commencement Of Commercial Operations.

AirWaves supports the Commission's proposal that PCS licensees be required to work through a clearinghouse to determine reimbursement payment obligations prior to initiating service. Payment should not be required, however, until the date that the PCS licensee commences commercial operations, and not at any time during the testing phase of a system, when there will be little, if any customer usage.

B. The PCS Industry Should Support Clearinghouse Operations.

AirWaves agrees with the Commission's view that it is appropriate for the clearinghouse to be industry supported and administered.^{11/} The funding for the initial establishment of the clearinghouse and for its on-going operations should be drawn from contributions by all participating telecommunications carriers. AirWaves

^{11/} Id. at ¶ 64.

recommends that, for initial costs to establish the clearinghouse, funding should be based on a charge to existing PCS licensees on a per MHZ/POP basis. Future PCS license holders would be charged a one-time administrative fee upon the grant of their licenses. On-going operational funding should be based on contributions by each PCS licensee that seeks reimbursement under the cost-sharing plan, limited to each relocated link that is potentially compensable under the plan.

AirWaves suggests that it would also be appropriate for the clearinghouse to be a central repository of all technical information related to each relocated microwave path; such a database would assist in the calculation of interference rights for future PCS license holders.

VII. THE COMMISSION SHOULD ALLOW DESIGNATED ENTITIES TO UTILIZE INSTALLMENT PAYMENTS FOR REIMBURSEMENT PAYMENTS.

AirWaves supports the Commission's tentative conclusion that PCS licensees that qualify for installment payments under the Commission's Designated Entity rules should have the same option available to them with respect to payments under the cost-sharing formula. The Commission, consistent with its Congressional mandate,^{12/} has diligently sought to encourage the participation of small businesses, minorities and women in the development of the burgeoning wireless telecommunications industry. AirWaves believes it is appropriate for the Commission to maintain this commitment by applying the same installment rules to

^{12/} See 47 U.S.C. § 309(j)(4)(D).

reimbursement payments under the microwave relocation cost-sharing formula.

At the same time, AirWaves recommends the Commission not require installment payments of the microwave relocation reimbursement costs to Designated Entity license holders. For these license holders, it will be critical for payments to be paid in full upon commencement of commercial operations, in order to address what has shown to be and will most probably continue to be, challenging financial responsibilities for these entities.

VIII. DISPUTE RESOLUTION OPTIONS SHOULD BE FLEXIBLE.

AirWaves agrees with the Commission that the parties should be encouraged to resolve disputes within the framework of the clearinghouse.^{13/} At the same time, it is important that participating carriers have other opportunities to bring disputes for resolution, first with alternative dispute resolution procedures and finally through our judicial system. AirWaves does not believe that the failure to comply with cost-sharing obligations should be considered by the Commission when deciding on renewal and/or transfer of control or assignment applications. There may be a variety of reasons that are not relevant to the renewal or transfer of control/assignment processes for a participating carrier not to have made cost-reimbursement payments.

^{13/} Id. at ¶ 67.

IX. CLARIFICATION OF RELOCATION GUIDELINES WILL FACILITATE
NEGOTIATION AMONG THE PARTIES.

A. Clarification Of The Term "Good Faith" Will
Facilitate Negotiations And Help Reduce Disputes.

AirWaves agrees with the Commission's conclusion that a clarification of the term "good faith" negotiations would be helpful. AirWaves supports the Commission's proposal that, for purposes of the mandatory negotiation period, an offer by a PCS licensee to replace a microwave incumbent's system with comparable facilities constitutes a "good faith" offer, and that the failure to accept an offer of comparable facilities would create a rebuttable presumption that the incumbent is not acting in good faith. AirWaves believes it is premature to mandate rules regarding imposing penalties on either PCS or incumbent microwave licensees that do not act in good faith.

B. Clarification Of The Responsibilities And
Obligations Of The Parties With Regard To
Comparability Is Required.

AirWaves supports the Commission in its conclusion that further clarification of the definition of comparable facilities is appropriate. As AirWaves has commented above, a relocater's responsibility for comparable facilities should be limited to the actual costs associated with providing a replacement system, which does not include extraneous expenses such as consultant fees or upgrading current analog systems to digital systems.

CONCLUSION

With minor modifications and suggestions, AirWaves supports the Commission's efforts to establish an equitable cost-sharing arrangement for the relocation of microwave incumbents in the 2 GHz band. The Commission's proposals

will go far to expedite and enhance the development and deployment of PCS systems, and will speed the provision of this exciting new service to the public.

Respectfully submitted,

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